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## NOTICE OF ALLOWANCE AND FEE(S) DUE

57960      7590      03/26/2008

PVF -- SUN MICROSYSTEMS INC.  
C/O PARK, VAUGHAN & FLEMING LLP  
2820 FIFTH STREET  
DAVIS, CA 95618-7759

EXAMINER	
WANG, RONGFA PHILIP	
ART UNIT	PAPER NUMBER
2191	

DATE MAILED: 03/26/2008

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/666,515	09/18/2003	Mikhail A. Dmitriev	SUN-P9376-SPL	9178

TITLE OF INVENTION: METHOD AND APPARATUS FOR PERFORMING TIME MEASUREMENTS DURING INSTRUMENTATION-BASED PROFILING

APPLN. TYPE	SMALL ENTITY	ISSUE FEE DUE	PUBLICATION FEE DUE	PREV. PAID ISSUE FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	NO	\$1440	\$0	\$0	\$1440	06/26/2008

**THE APPLICATION IDENTIFIED ABOVE HAS BEEN EXAMINED AND IS ALLOWED FOR ISSUANCE AS A PATENT. PROSECUTION ON THE MERITS IS CLOSED. THIS NOTICE OF ALLOWANCE IS NOT A GRANT OF PATENT RIGHTS. THIS APPLICATION IS SUBJECT TO WITHDRAWAL FROM ISSUE AT THE INITIATIVE OF THE OFFICE OR UPON PETITION BY THE APPLICANT. SEE 37 CFR 1.313 AND MPEP 1308.**

**THE ISSUE FEE AND PUBLICATION FEE (IF REQUIRED) MUST BE PAID WITHIN THREE MONTHS FROM THE MAILING DATE OF THIS NOTICE OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED. THIS STATUTORY PERIOD CANNOT BE EXTENDED. SEE 35 U.S.C. 151. THE ISSUE FEE DUE INDICATED ABOVE DOES NOT REFLECT A CREDIT FOR ANY PREVIOUSLY PAID ISSUE FEE IN THIS APPLICATION. IF AN ISSUE FEE HAS PREVIOUSLY BEEN PAID IN THIS APPLICATION (AS SHOWN ABOVE), THE RETURN OF PART B OF THIS FORM WILL BE CONSIDERED A REQUEST TO REAPPLY THE PREVIOUSLY PAID ISSUE FEE TOWARD THE ISSUE FEE NOW DUE.**

**HOW TO REPLY TO THIS NOTICE:**

I. Review the SMALL ENTITY status shown above.

If the SMALL ENTITY is shown as YES, verify your current SMALL ENTITY status:

A. If the status is the same, pay the TOTAL FEE(S) DUE shown above.

B. If the status above is to be removed, check box 5b on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and twice the amount of the ISSUE FEE shown above, or

If the SMALL ENTITY is shown as NO:

A. Pay TOTAL FEE(S) DUE shown above, or

B. If applicant claimed SMALL ENTITY status before, or is now claiming SMALL ENTITY status, check box 5a on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and 1/2 the ISSUE FEE shown above.

II. PART B - FEE(S) TRANSMITTAL, or its equivalent, must be completed and returned to the United States Patent and Trademark Office (USPTO) with your ISSUE FEE and PUBLICATION FEE (if required). If you are charging the fee(s) to your deposit account, section "4b" of Part B - Fee(s) Transmittal should be completed and an extra copy of the form should be submitted. If an equivalent of Part B is filed, a request to reapply a previously paid issue fee must be clearly made, and delays in processing may occur due to the difficulty in recognizing the paper as an equivalent of Part B.

III. All communications regarding this application must give the application number. Please direct all communications prior to issuance to Mail Stop ISSUE FEE unless advised to the contrary.

**IMPORTANT REMINDER: Utility patents issuing on applications filed on or after Dec. 12, 1980 may require payment of maintenance fees. It is patentee's responsibility to ensure timely payment of maintenance fees when due.**

## PART B - FEE(S) TRANSMITTAL

Complete and send this form, together with applicable fee(s), to: **Mail Stop ISSUE FEE**  
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INSTRUCTIONS: This form should be used for transmitting the ISSUE FEE and PUBLICATION FEE (if required). Blocks 1 through 5 should be completed where appropriate. All further correspondence including the Patent, advance orders and notification of maintenance fees will be mailed to the current correspondence address as indicated unless corrected below or directed otherwise in Block 1, by (a) specifying a new correspondence address; and/or (b) indicating a separate "FEE ADDRESS" for maintenance fee notifications.

CURRENT CORRESPONDENCE ADDRESS (Note: Use Block 1 for any change of address)

57960            7590            03/26/2008

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**2820 FIFTH STREET**  
**DAVIS, CA 95618-7759**

Note: A certificate of mailing can only be used for domestic mailings of the Fee(s) Transmittal. This certificate cannot be used for any other accompanying papers. Each additional paper, such as an assignment or formal drawing, must have its own certificate of mailing or transmission.

### **Certificate of Mailing or Transmission**

I hereby certify that this Fee(s) Transmittal is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Mail Stop ISSUE FEE address above, or being facsimile transmitted to the USPTO (571) 273-2885, on the date indicated below.

(Depositor's name)

(Signature)

(Date)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/666,515	09/18/2003	Mikhail A. Dmitriev	SUN-P9376-SPL	9178

TITLE OF INVENTION: METHOD AND APPARATUS FOR PERFORMING TIME MEASUREMENTS DURING INSTRUMENTATION-BASED PROFILING

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nonprovisional	NO	\$1440	\$0	\$0	\$1440	06/26/2008

EXAMINER	ART UNIT	CLASS-SUBCLASS
WANG, RONGFA PHILIP	2191	717-130000

1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363).

- Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached.  
 "Fee Address" indication (or "Fee Address" Indication form PTO/SB/47; Rev 03-02 or more recent) attached. **Use of a Customer Number is required.**

2. For printing on the patent front page, list  
 (1) the names of up to 3 registered patent attorneys or agents OR, alternatively,  
 (2) the name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed.

1 \_\_\_\_\_  
 2 \_\_\_\_\_  
 3 \_\_\_\_\_

3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)

PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. If an assignee is identified below, the document has been filed for recordation as set forth in 37 CFR 3.11. Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE

(B) RESIDENCE: (CITY and STATE OR COUNTRY)

Please check the appropriate assignee category or categories (will not be printed on the patent):  Individual  Corporation or other private group entity  Government

4a. The following fee(s) are submitted:

- Issue Fee  
 Publication Fee (No small entity discount permitted)  
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4b. Payment of Fee(s): (Please first reapply any previously paid issue fee shown above)

- A check is enclosed.  
 Payment by credit card. Form PTO-2038 is attached.  
 The Director is hereby authorized to charge the required fee(s), any deficiency, or credit any overpayment, to Deposit Account Number \_\_\_\_\_ (enclose an extra copy of this form).

5. Change in Entity Status (from status indicated above)

- a. Applicant claims SMALL ENTITY status. See 37 CFR 1.27.  b. Applicant is no longer claiming SMALL ENTITY status. See 37 CFR 1.27(g)(2).

NOTE: The Issue Fee and Publication Fee (if required) will not be accepted from anyone other than the applicant; a registered attorney or agent; or the assignee or other party in interest as shown by the records of the United States Patent and Trademark Office.

Authorized Signature \_\_\_\_\_

Date \_\_\_\_\_

Typed or printed name \_\_\_\_\_

Registration No. \_\_\_\_\_

This collection of information is required by 37 CFR 1.311. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, Virginia 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

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10/666,515	09/18/2003	Mikhail A. Dmitriev	SUN-P9376-SPL	9178
57960	7590	03/26/2008	EXAMINER	
PVF -- SUN MICROSYSTEMS INC. C/O PARK, VAUGHAN & FLEMING LLP 2820 FIFTH STREET DAVIS, CA 95618-7759				WANG, RONGFA PHILIP
ART UNIT		PAPER NUMBER		
		2191		
DATE MAILED: 03/26/2008				

## Determination of Patent Term Adjustment under 35 U.S.C. 154 (b)

(application filed on or after May 29, 2000)

The Patent Term Adjustment to date is 674 day(s). If the issue fee is paid on the date that is three months after the mailing date of this notice and the patent issues on the Tuesday before the date that is 28 weeks (six and a half months) after the mailing date of this notice, the Patent Term Adjustment will be 674 day(s).

If a Continued Prosecution Application (CPA) was filed in the above-identified application, the filing date that determines Patent Term Adjustment is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) WEB site (<http://pair.uspto.gov>).

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (571)-272-7702. Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at 1-(888)-786-0101 or (571)-272-4200.

<b>Notice of Allowability</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/666,515	DMITRIEV, MIKHAIL A.	
	<b>Examiner</b>	<b>Art Unit</b>	
	PHILIP WANG	2191	

-- **The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1.  This communication is responsive to RCE filed on 2/28/2008.
2.  The allowed claim(s) is/are 1,2,7-10,15 and 16.
3.  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a)  All    b)  Some\*    c)  None    of the:
    1.  Certified copies of the priority documents have been received.
    2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_ .
    3.  Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4.  A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5.  CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
  - (a)  including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
    - 1)  hereto or 2)  to Paper No./Mail Date \_\_\_\_\_.
  - (b)  including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6.  DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1.  Notice of References Cited (PTO-892)
2.  Notice of Draftsperson's Patent Drawing Review (PTO-948)
3.  Information Disclosure Statements (PTO/SB/08),  
Paper No./Mail Date \_\_\_\_\_
4.  Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5.  Notice of Informal Patent Application
6.  Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_ .
7.  Examiner's Amendment/Comment
8.  Examiner's Statement of Reasons for Allowance
9.  Other \_\_\_\_\_.

### **DETAILED ACTION**

1. This office action is in response to RCE filed on 2/28/2008.
2. The objection to the specification is withdrawn in view of the Applicant's amendment to the Specification.
3. The 35 U.S.C. § 112 2<sup>nd</sup> rejections of claims 1, 2, 4-10, and 12-16 are withdrawn in view of the Applicant's amendment to the claims.
4. Per Applicant's request, claims 1, and 9 have been amended.
5. Claims 1, 2, 7-10, and 15-16 are allowed.

### **EXAMINER'S AMENDMENT**

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in communication with Shun Yao (Reg. No. 59,242) on March 18, 2008 to obviate any potential issues and to put the claims in condition for allowance.

6. The application has been amended as follows:

The following currently amended claims replace all previously presented claims.

1. (Currently Amended) A method for performing time measurements during instrumentation-based profiling, comprising:  
measuring an overhead time, wherein the overhead time is the time required to execute profiling instrumentation code in isolation measured through a calibration procedure, wherein the

calibration procedure involves executing the instrumentation code in a loop for a number of times, and wherein multiple copies of the instrumentation code are included in the loop;

receiving a code to be profiled;

inserting the profiling instrumentation code in the code;

executing the code including the instrumented portions of the code;

measuring a time for executing the code including the instrumented portions of the code;

and

subtracting the overhead time from the measured time to obtain the time for the code to be profiled;

wherein the profiling instrumentation code is executed multiple times to determine an average value for the overhead time;

wherein the profiling instrumentation code includes method entry code that takes a first time measurement at the beginning of a method, and method exit code that takes a second time measurement at the end of the method, wherein the first and second time measurements are used to calculate an execution time for the method; and

wherein determining the overhead time involves calculating an inner time  $t_I = x_2 + y_1$ , wherein  $y_1$  is the time between when the first time measurement is taken and when the method entry code is finished executing, and wherein  $x_2$  is the time between when the method exit code begins executing and when the second time measurement is taken.

4. (Canceled)

5. (Canceled)

6. (Canceled)

7. (Currently Amended) The method of claim 61, wherein the time  $t_{exact}$  for executing instrumented portions of the code is calculated as  $t_{exact} = t_{meas} - t_I$ .

9. (Currently Amended) A computer-readable storage medium storing instructions that when executed by a computer cause the computer to perform a method for performing time measurements during instrumentation-based profiling, wherein the computer-readable storage medium includes magnetic and optical storage devices, disk drives, magnetic tape, CDs

(compact discs), and DVDs (digital versatile discs or digital video discs), the method comprising:

measuring an overhead time, wherein the overhead time is the time required to execute profiling instrumentation code in isolation measured through a calibration procedure, wherein the calibration procedure involves executing the instrumentation code in a loop for a number of times, and wherein multiple copies of the instrumentation code are included in the loop;

receiving a code to be profiled;

inserting the profiling instrumentation code in the code;

executing the code including the instrumented portions of the code;

measuring a time for executing the code including the instrumented portions of the code;

and

subtracting the overhead time to obtain the time for the code to be profiled;

wherein the profiling instrumentation code is executed multiple times to determine an average value for the overhead time;

wherein the profiling instrumentation code includes method entry code that takes a first time measurement at the beginning of a method, and method exit code that takes a second time measurement at the end of the method, wherein the first and second time measurements are used to calculate an execution time for the method; and

wherein determining the overhead time involves calculating an inner time  $t_I = x_2 + y_1$ , wherein  $y_1$  is the time between when the first time measurement is taken and when the method entry code is finished executing, and wherein  $x_2$  is the time between when the method exit code begins executing and when the second time measurement is taken.

.

12. (Canceled)

13. (Canceled)

14. (Canceled)

15. (Currently Amended) The computer-readable storage medium of claim 49, wherein the time  $t_{exact}$  for executing instrumented portions of the code is calculated as  $t_{exact} = t_{meas} - t_I$ .

-end of currently amended claims-

7. The following is an examiner's statement of reasons for allowance:

The cited prior art taken alone or in combination fail to teach the limitation "the calibration procedure involves executing the instrumentation code in a loop for a number of times, and wherein multiple copies of the instrumentation code are included in the loop;" with the specific profiling code instrumentation as recited in independent claims 1, and 9.

The closest cited prior arts by Beck et al (PGPUB. No. 2002/0049963) and Almy et al. (US Patent No. 6,609,216) disclose a method of measuring overhead time. However, it does specifically disclose measuring overhead time using multiple copies of instrumented code inside a loop and getting an average time for the measured time.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Philip Wang whose telephone number is 571-272-5934. The examiner can normally be reached on Mon - Fri 8 - 44:00PM. Any inquiry of general nature or relating to the status of this application should be directed to the TC2100 Group receptionist: 571-272-2100.

Art Unit: 2191

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wei Zhen can be reached on 571-272-3708. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Wei Zhen/

Supervisory Patent Examiner, Art Unit 2191